

9D-HR-19396  
PATENT**Remarks**

The Office Action mailed January 12, 2004 has been carefully reviewed and the following remarks are made in consequence thereof.

Claims 1-27 are now pending in this application. Claims 1-27 stand rejected.

The rejection of Claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over Wiseman et al. in view of Official Notice is respectfully traversed.

It is respectfully submitted that the present Section 103 rejection is not a proper rejection.

35 U.S.C. § 103(c) provides that subject matter developed by another which qualifies as "prior art" only under one or more of subsections 35 U.S.C. 102(e), (f) and (g) is not to be considered when determining whether an invention sought to be patented is obvious under 35 U.S.C. 103, provided the subject matter and the claimed invention were commonly owned at the time the invention was made. See M.P.E.P. § 2146. Applicants note that the present application was filed on December 22, 2000. The Wiseman et al. reference was filed August 11, 2000 and issued on December 2, 2003 without prior publication. Because the issue date of Wiseman et al. is subsequent to the filing date of the present application, Wiseman et al. does not qualify as prior art under Section 102(a) or Section 102(b). It is therefore apparent that the Wiseman et al. reference qualifies as prior art only under Section 102(e).

Applicants further note that the Wiseman et al. reference and the present application were, at the time the invention was made, commonly owned by or subject to an obligation to assign to General Electric Company. Accordingly, Under §103(c), Wiseman et al. may not be considered as a basis for the instant Section 103 rejection.

It is therefore respectfully submitted that the reliance upon Wiseman et al. to reject the present claims is improper, and Applicants accordingly respectfully request that the Section 103(a) rejection of Claims 1-27 be withdrawn.

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In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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